UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD Division of Judges

AVANTI HEALTH SYSTEM, LLC; CHHP HOLDINGS II, LLC; AND CHHP MANAGEMENT, LLC

and

Case 21-CA-39268

CALIFORNIA NÜRSES ASSOCIATION/ NATIONAL NURSES ORGANIZING COMMITTEE, NATIONAL NURSES UNITED, AFL-CIO

COUNSEL FOR THE ACTING GENERAL COUNEL'S BRIEF IN SUPPORT OF LIMITED EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER

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I. ISSUES PRESENTED

- A. Should the order include a requirement that in addition to physical posting of the Notice to Employees, Respondents distribute notices electronically, such as by email, posting on the intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their members by such means?
- B. The ALJ inadvertently omitted the part-time registered nurse position from the bargaining unit. Should the order and notice be modified to properly include this classification?

II. PROCEDURAL HISTORY

On June 14, 2011, the ALJ, who presided over a 4-day hearing, issued his decision and order. While the ALJ found that Respondents violated Section 8(a)(1) and (5) of the Act, ordering Respondents to recognize and bargain with the Union, the ALJ did not order that the Notice to Employees be electronically posted and mistakenly omitted the part-time registered nurse position from the bargaining unit description.

III. FACTS AND DISCUSSION

A. The Recommended Order Should be Modified to Include an Electronic Posting

In <u>J. Picini Flooring</u>, 356 NLRB No. 9 (October 22, 2010), the Board ruled that union respondents who customarily communicate with their members electronically, such as by e-mail, or posting on an internet or an intranet site, will be required to post remedial notices the same way, in addition to posting a paper notice on a bulletin board. The Board further found that its new policies and standards apply "retroactively to all pending cases in whatever stage." Id. slip op at 5. Therefore, the ALJ's recommended order should be

modified to include an order that requires Respondents to distribute notices electronically, such as by email, posting on the intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their members by such means.

B. The ALJ's Mistakenly Omitted the Part-Time RN Position

The relevant collective-bargaining agreement ("CBA")¹, provides that the following employees are included in the bargaining unit: All full-time, *part-time*, and per diem Registered Nurses, including those who serve as relief charge nurses. (emphasis added)

In his decision and order, the ALJ failed to include the position of part-time RN in the recitation of the bargaining unit description. The ALJ made <u>no</u> finding that the part-time RNs should be excluded from the bargaining unit. Accordingly, this is an apparent error and should be corrected. Supporting the argument that omission of the part-time RNs was a mere mistake is the fact that even when reciting the bargaining unit description as set out in the CBA, the ALJ omitted the part-time RNs though the CBA clearly includes them. (ALJD 4: 30-35)

Therefore, the ALJ simply erred in omitting the part-time RNs from the bargaining unit and the order should be modified to include that classification.

¹ The CBA was entered into the record Charging Party Exhibit 1 ("CPX 1").

IV. CONCLUSION

Based on the foregoing, the record shows that the recommended order should be modified to accurately reflect the Board's new policies and modified to correctly reflect the ALJ's findings.

V. REMEDY

It is respectfully submitted that the ALJ's recommended order be amended, as follows:

- A. To the recommended order modify the bargaining unit description as follows:
- 1. <u>Included</u>: All full-time, part-time, and per diem Registered Nurses, including those who serve as relief charge nurses.
 - B. To the recommended order add the following language:
- 1. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on the intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their members by such means.

- C. To the Notice to Employees modify the bargaining unit descriptions as follows:
- 1. <u>Included</u>: All full-time, part-time, and per diem Registered Nurses, including those who serve as relief charge nurses.

Respectfully submitted

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Region 21

Dated at los Angeles, California this 12th day of July, 2011

STATEMENT OF SERVICE

I hereby certify that a copy of Counsel for the Acting General Counsel's Brief in Support of Limited Exceptions to the Administrative Law Judge's Decision And Order was submitted by E-filing to the Office of the Executive Secretary of the National Labor Relations Board on July 12, 2011.

The following parties were served with a copy of that document by electronic mail on July 12, 2011.

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